



STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of

Sawyer County Human Services Department / Northern Income Maintenance Consortium

vs.

██████████, Respondent

DECISION

Case #: FOF - 206099

Pursuant to a petition filed by the Northern Income Maintenance Consortium on August 29, 2022, under Wis. Admin. Code §HA 3.03 and 7 C.F.R. § 273.16, to review its decision to disqualify ██████████ from receiving FoodShare benefits (FS) for a period of one year, an administrative disqualification hearing was scheduled to occur on October 18, 2022. At that time, Respondent and her spouse, ██████████, who is the respondent in a related FoodShare administrative disqualification hearing (DHA Case No. FOF-206101), stated that ██████████ would be serving as her representative and that she was opting not to personally participate in the hearing. All three parties agreed that it would be appropriate for ██████████ and ██████████ hearings to be held at the same time. At Respondent's request, both hearings were then rescheduled to allow the agency to mail a copy of proposed exhibits for her case to ██████████ in his capacity as her chosen representative.

The hearing was rescheduled for November 16, 2022. On that date, the administrative law judge was unable to commence the hearing at the scheduled start time due to another hearing requiring more time than anticipated and Respondent's representative stated his preference to reschedule the matter to a different date rather than to hold the hearing at a later time on November 16, 2022. The hearing was then scheduled for and held on Tuesday, November 29, 2022 at 09:00 AM by teleconference initiated from Madison, Wisconsin.

The hearing record was held open until December 13, 2022 to allow the parties to submit additional exhibits and was then held open until December 27, 2022 to allow the parties to file replies to one another's post-hearing exhibits. Prior to the deadline, the agency submitted five audio recordings as additional exhibits. Those exhibits have been marked as Petitioner's Exhibits 14A – 14E. Prior to the deadline, Respondent submitted an audio recording which has been marked as Respondent's Exhibit 1 and the following documents: a September 15, 2020 letter addressed to ██████████ (aka ██████████) from the Wisconsin Department of Corrections; five non-contiguous pages relevant to a CHIPS case filed in Lincoln County; six pages of handwritten notes; and ten pages of carbon copies of checks. Those documents have been marked together as Petitioner's Exhibit 2. The agency filed a reply to Respondent's post-hearing submission on December 20, 2022. Respondent did not file a response to the agency's post-hearing submission.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Sawyer County Human Services Department / Northern Income Maintenance Consortium
10610 Main Street
PO Box 730
Hayward, WI 54843

Respondent:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # [REDACTED]) is a resident of Lincoln County. She is married to [REDACTED].
2. Respondent and [REDACTED] lived together in the southwestern part of the state from approximately March 2020 through June 2020. On an unspecified date in approximately July 2020, they moved together to a rental property located at [REDACTED], Wisconsin which they continued to rent through at least November 2022. ([REDACTED] Testimony)
3. From at least April 2020 through May 2022, [REDACTED] and Respondent received benefits on separate FS cases. (Petitioner's Ex. 8).
4. In April 2020, [REDACTED] filed an application by telephone for FS and reported that he lived at [REDACTED] in [REDACTED] and that no one else resided in his home. (See DHA Case No. FOF-206101, Petitioner's Exs. 7 and 8).
5. In August 2020, [REDACTED] reported to the agency that he had moved to [REDACTED] in [REDACTED] as of July 2020 and that he and his friend, [REDACTED], were renting to own that property from his mother. He also reported that he purchased and prepared food separately from [REDACTED]. (See DHA Case No. FOF-206101, Petitioner's Ex. 7; case notes 8/10/20 and 8/18/2020 and Ex. 12).
6. On September 22, 2020, [REDACTED] and Respondent were married. ([REDACTED]'s Testimony)
7. [REDACTED] was incarcerated from approximately December 12, 2020 through February 28, 2021 (See DHA Case No. FOF-206101, Petitioner's Exhibit 7; case notes dated 12/15/20 and 4/22/21).
8. On April 19, 2021, Respondent filed a FS renewal for her own FS case. On the renewal form that she submitted, she updated her marital status to "married" and listed her address as [REDACTED] Wisconsin. She did not however list any other people in her home. On April 23, 2021, an agency

representative contacted Respondent by telephone to seek clarification regarding her household composition. Respondent reported that she was not living with her spouse. (See Petitioner's Exs. 6 and 8).

9. On April 22, 2021, three days after Respondent filed a FS renewal and reported that she was married to [REDACTED] but living alone at [REDACTED] Wisconsin, [REDACTED] completed a FS telephone interview and reported that he was living alone at [REDACTED]. He did not list any other people in his home and did not notify the agency that he was married. On April 23, 2021, the agency sent [REDACTED] a written summary of the information he provided during the telephone interview and instructed him to contact the agency if the summary contained any incorrect information. Consistent with his telephone interview, the summary listed his marital status as divorced. (See DHA Case No. FOF-206101, Petitioner's Exs. 6, 7, and 8).
10. For an unknown period of time prior to the date of the hearing in this matter, a no contact order was in place that prohibited [REDACTED] from and Respondent from having contact. (Respondent's Ex. 2, labeled "Document 81"; Petitioner's Ex. 14D--audio recording of phone call from [REDACTED]; and [REDACTED] Testimony).
11. [REDACTED] was incarcerated from approximately October 12, 2021 and was released on February 28, 2022. (See DHA Case No. FOF-206101, Petitioner's Ex. 7; case notes dated 11/15/21, and 3/1/22).
12. On March 1, 2022, [REDACTED] reapplied for FS and completed a FS telephone interview. He again did not list any other people in his home and again did not notify the agency that he was married. On March 2, 2022, the agency sent [REDACTED] a written summary of the information he provided during the telephone interview and instructed him to contact the agency if the summary contained any incorrect information. Consistent with his telephone interview, the summary listed his marital status as divorced. (See DHA Case No. FOF-206101, Petitioner's Exs. 6, 7, and 8)
13. On April 27, 2022, the Lincoln County Department of Child Protective Services reported to the agency that [REDACTED] was married and residing with his spouse. Because, at that time, [REDACTED] and Respondent had FS cases open in their own names, the agency sent them each a request for verification of household composition and subsequently initiated a fraud investigation. (Petitioner's Exs. 7 and 8 and Agency Representative Kind's Testimony)
14. On August 31, 2022, the agency issued an Administrative Disqualification Hearing Notice alleging that Respondent married [REDACTED] on 09/22/2020 but reported that they did not live together, that the agency was therefore seeking to impose a one-year penalty against Respondent, and that Respondent received benefits she was not eligible to receive from November 2020 through May 2022.

DISCUSSION

An intentional program violation (IPV) of the FoodShare program occurs when a recipient intentionally does the following:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts;
or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

FoodShare Wisconsin Handbook, § 3.14.1; *see also* 7 C.F.R. § 273.16(c) and Wis. Stat. §§ 946.92(2).

An individual who commits an IPV can be disqualified from participation in the FoodShare (FS) program. The length of the disqualification period depends, in part, on the nature of the IPV. *See* 7 C.F.R. § 273.16(b). Generally, an individual will be disqualified for twelve months after committing her or his first IPV. *See* 7 C.F.R. § 273.16(b)(1)(i). *The petitioner/agency can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household.* Although other adult family members cannot be disqualified, their monthly allotments will be reduced unless they agree to make restitution within 30 days of the date that the FS program mails a written demand letter. 7 C.F.R. § 273.16(b).

An IPV can be proven by a court order, a diversion agreement entered into with the local district attorney, a waiver of a right to a hearing, or an administrative disqualification hearing. *FoodShare Wisconsin Handbook* § 3.14.1. To prevail at an administrative disqualification hearing, the agency seeking to establish that a FS recipient has committed an IPV must prove the following two separate elements through the presentation of clear and convincing evidence: (1) the recipient committed a program violation; and (2) the recipient intended to commit a program violation per 7 C.F.R. § 273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. ...

Kuehn, 11 Wis.2d at 26.

Wisconsin Jury Instruction – Civil 205 is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong) gen. ed., 4th ed. 1992.

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence a firm conviction as to the existence of each of the two elements even though there may be a reasonable doubt as to their existence.

In order to prove the second element, i.e., intention, there must be clear and convincing evidence that the FS recipient intended to commit the IPV. The question of intent is generally one to be determined by the trier of fact. *State v. Lossman*, 118 Wis.2d 526 (1984). There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. *See, John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). Thus, there must be clear and

convincing evidence that the FS recipient knew that the act or omission was a violation of the FS Program but committed the violation anyway.

The agency here contended that Respondent committed an intentional program violation by failing to report that she resided with her spouse, [REDACTED], in April 2021 when she filed an on-line FS renewal and during a subsequent telephone conversation with an agency worker. The agency further contended that by doing so, she received more benefits than he was eligible to receive. For the reasons set forth below, I concur.

The agency offered copies of Respondent's April 19, 2021 on-line renewal and of case comments entered into the agency's database by the worker who spoke with [REDACTED] in April 2021 which documented the information he provided during a FS telephone interview that he completed on his own case just three days later. Those case comments and case summaries together indicate that [REDACTED] reported residing alone at [REDACTED] Wisconsin and that his marital status remained "divorced". Unlike [REDACTED], Respondent reported to the agency that she was married. But, like [REDACTED], she reported that she lived at [REDACTED], Wisconsin and that she lived alone.

Plainly, [REDACTED] and Respondent could not have both lived at [REDACTED], a one family home, and both lived alone at the same time. At hearing, [REDACTED] who appeared on behalf of Respondent, intimated that Respondent may have reported her address as [REDACTED] because she has a rental agreement there but argued that the existence of a rental agreement does not mean she was living there at that time. And, Respondent did not personally participate in the hearing to explain or rebut the agency's evidence. The evidence in the record however indicates that [REDACTED] is rented as a month to month tenancy so Respondent would have no ongoing contractual obligation. Moreover, it is not clear why she would have continued paying rent since 2020, as Respondent claimed she has, if she no longer lives at [REDACTED] particularly if Respondent is currently involved with another woman, as he also contended at hearing. It seems a more reasonable inference that Respondent reported that she lived at [REDACTED] in April 2021 because she did, in fact, live there at that time (which does not rule out the possibility that she has spent significant time in Crawford County over the past several years) and that she reported that she lived alone to avoid any consequences of violating the no-contact order that Respondent referenced at hearing.

[REDACTED] also asserted that Respondent and he stopped living together in November 2020, not because they were divorced or separated, but because either the Department of Corrections or Lincoln County Department of Social Services ordered them to have no contact with one another. Neither party offered documentation to verify the dates of the no contact order but there seems to be no dispute that during at least part of the time between Respondent's marriage in September 2020 and the date of the hearing in this matter, a no contact order was in place. [REDACTED] argued that the no contact order was evidence that he and Respondent had in fact had no contact.

The agency pointed out that the existence of a no contact order does not mean that there was in fact no contact. I concur and note that there is evidence in the record that [REDACTED] and Respondent continued to have contact with one another after November 2020. For example, Joshua Erickson, an investigator retained by the agency to investigate Respondent's household composition, testified that he interviewed [REDACTED] in June 2022 at which time [REDACTED] indicated that he had seen Respondent four months prior. A recording of that interview was offered as an exhibit and reflected the accuracy of Mr. Erickson's testimony in that regard. And, [REDACTED] himself offered documentation that references an altercation between Respondent and him in October 2021.

[REDACTED] also testified that the Department of Corrections ordered Respondent to spend no more than 50% of her time in either Crawford County or Lincoln County. He did not offer documentation to establish the dates that the order was in place and did not identify particular dates that she lived in either location. Although [REDACTED] offered a copy of select pages of court documents filed in a CHIPS case concerning Respondent's son that indicate she reported to the Department of Social Services that she was residing outside of [REDACTED] Wisconsin

from August 2021 through December 2021, the question here is whether Respondent committed an intentional program violation when filing applications for FS in April 2021 or March 2022. Moreover, as the agency rightly pointed out, the CHIPS-related documents are of limited probative value since there are several pages missing.

Finally, I want to clarify that though [REDACTED] and the agency both spent a good deal of time arguing about whether his mother who owns the rental property at [REDACTED], Wisconsin charges Respondent and him \$750 or \$1,500 per month, I did not find that question to be relevant to a determination of whether Respondent intentionally withheld information from the agency by failing to report that she was residing with her spouse. I also note that I did not give any weight to the audio recordings offered by the agency with the exception of the recording of Joshua Erickson's interview with [REDACTED]. That recording was considered because both [REDACTED] and Mr. Erickson were at the hearing and available to offer sworn testimony and were both available for cross-examination. Similarly, I gave no weight to an audio recording that [REDACTED] made of a telephone conversation he had with his mother the night prior to the hearing in part because his mother was not present at the hearing to offer sworn testimony but more so because the content of the phone call, which consisted almost entirely of [REDACTED] talking and asking his mother leading questions, was simply not persuasive evidence.

Based upon the record before me, I find that the petitioner has established by clear and convincing evidence that the respondent intentionally violated FS program rules by withholding information regarding her household composition when she completed an on-line FS renewal in April 2021 and during a subsequent telephone contact with the agency. I further find that this violation was the first such violation committed by the respondent. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for one year.

CONCLUSIONS OF LAW

1. The respondent misrepresented, concealed or withheld facts by failing to accurately report her household composition when completing an on-line FS renewal in April 2021; she thus committed an intentional program violation as that term is defined in 7 C.F.R. § 273.16(c)(1).
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

NOW, THEREFORE, it is

ORDERED

That the petitioner's determination is sustained, and that the petitioner may make a finding that the respondent committed a first IPV of the FoodShare program and disqualify the respondent from the program for one year, effective the first month following the date of receipt of this decision.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

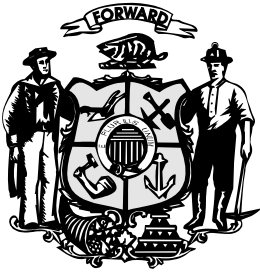
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 10th day of January, 2023



\sTeresa A. Perez
Administrative Law Judge
Division of Hearings and Appeals

c: Northern Consortium - email
Public Assistance Collection Unit - email
Division of Health Care Access and Accountability - email
[REDACTED]
Stacey Kind - email



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The preceding decision was sent to the following parties on January 10, 2023.

Sawyer County Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
[REDACTED]